

Bob Harris, CAE  
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bob@rchcae.com

**The First Bite  
Conflict of Interest**  
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The chairman of the board explained his perspective about directors benefitting from board service. “Because our board members are volunteers the best way to ensure they receive payback is give them first bite at business opportunities in the association.”

In other words, when opportunities arise the board members have priority for receiving the business. I was taken aback.

I had read the organization’s governing documents. The board had signed a code of conduct prescribing their role as serving all members and advancing the mission. Yet this board was “creaming off” opportunities that members might have enjoyed because they felt it was ok to have “first bite” as a reward for their service.

### **Fiduciary Role**

Directors serve as fiduciaries on behalf of members and stakeholders. A fiduciary is a person who cares for the assets of others. In the relationship of the directors to members, the board must act for the sole benefit of the interests of members.

Dating back to 1896 a court stated a fiduciary is expected to be extremely loyal to the person to whom he owes the duty. Thus, a fiduciary must not profit from the position.

### **Policy**

Most organizations have a policy or code of conduct describing the board’s guiding principles. It nearly always addresses duties, service to members, protecting assets and disclosing conflicts.

Since major revisions to IRS Form 990 in 2008, disclosure of conflicts has taken center stage. Several times the form addresses conflicts, twice asking if every member of the governing body is independent (making decisions without the influence of family or business relationships.)

More emphasis comes when the IRS asks two more questions. Does a policy exist requiring directors and senior staff to disclose conflicts annually? And a follow up question, “Did the organization regularly and consistently monitor and enforce compliance with the policy?”

### **Practice**

Disclosure of conflicts should not be considered interference or a burden on the board. It's a simple process to do a brief orientation with the board, ensuring they have access to the documents they need for governance. Included in the process would be discussion of the code of conduct.

Many associations ask the board to sign a commitment that combines several statements:

- Agreement to disclose conflicts of interest.
- Avoidance of antitrust laws.
- Respect for confidentiality.
- Support for the decisions of the board.
- Willingness to abide by the governing documents.

### **Handling a Conflict**

The chair and board should be versed in handling conflicts as they arise. A conflict could be as serious as a construction association board member whose spouse is on an opposing "no growth" organization. The fact should be made clear to the chair and staff at the start of the term.

A lesser conflict may be a board discussion about transferring finances to a new bank. Failure of a director to indicate that his or her spouse is vice president of that bank would be an omission.

When a conflict is disclosed, the chair, executive committee or board usually has options. It might be as simple as recognizing the disclosure and recording it in the minutes. In another instance, the disclosing director might be asked to excuse or recuse himself from the meeting or vote. Finally, a more significant conflict may result in asking the director to resign.

In summary, I had never heard the perspective that board members should get "first bite" at association opportunities because they volunteer. This is counter to good governance policies (conflicts, transparency, public records, for instance) that have guided association boards for more than a century.

Be sure to rely on legal and accounting counsel regarding development and implementation of conflict of interest policy.

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Note: Bob Harris, CAE, provides board governance tips and templates at [www.nonprofitcenter.com](http://www.nonprofitcenter.com).